

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

FRANKIE GAILES
Plaintiff,

vs.

STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY
Defendant.

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Civil Action Number

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, State Auto Property & Casualty Insurance Company, files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and would respectfully show as follows:

I.
INTRODUCTION

1. Plaintiff is Frankie Gailes (“Plaintiff”); Defendant is State Auto Property & Casualty Insurance Company (“State Auto”). There are no other parties. *See* Plaintiff’s Original Petition, attached as Exhibit “A - 1”.

2. On June 2, 2015, Plaintiff filed Cause No. 49063-A, *Frankie Gailes v. State Auto Property & Casualty Insurance Company*, in the 42nd District Court of Taylor County, Texas (“State Court Action”). *See* Exhibit “A - 1”. Plaintiff’s suit alleges breach of contract, violations of the Texas Insurance Code and Deceptive Trade Practices Act, unfair insurance practices, and breach of duty of good faith and fair dealing relating to storm damage allegedly suffered at Plaintiff’s home located at 1501 N. 17th Street, Abilene, Texas 79601. *See* Exhibit “A - 1”.

3. Citation was issued and State Auto was served with the suit on June 8, 2015. *See* Exhibit “A - 4” and “A - 5” and Affidavit of Rhonda Lukie, attached as Exhibit “B”. State Auto files

this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

State Auto filed its Answer in State Court on June 26, 2015. See Exhibit “A - 6”.

4. Plaintiff has not filed any amended pleadings and no additional parties have been joined.

The State Court’s Docket Sheet is attached as Exhibit “A - 7”.

II.

REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiff is a citizen of Texas. *See* Exhibit “A - 1”. State Auto is a foreign corporation organized under the laws of the state of Iowa with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See* Exhibit “B”.

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff’s Original Petition seeks “monetary relief over \$200,000 but not more than \$1,000,000.” *See* Exhibit “A - 1”.

8. State Auto is the only defendant in this action; therefore, no consent is needed for the removal of this case to federal court.

9. An Index of Exhibits is attached as Exhibit “A”. Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits “A - 1” through “A - 7”, as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this Notice of Removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

12. Plaintiff demanded a jury in the State Court Action.

IV.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant State Auto prays that this case be removed to the United States District Court for the Northern District of Texas, Abilene Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

/s/ Sterling Elza
Sterling Elza
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**ATTORNEY FOR DEFENDANT,
STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiff, by serving counsel of record, Ben Crowell, Speights & Worrich, 1350 North Loop 1604 E., Suite 104, San Antonio, Texas 78232, (210) 495-6790, via fax and certified mail, return receipt requested, on this the 1st day of July, 2015.

/s/ Sterling Elza
Sterling Elza